

UNITED STATES DISTRICT COURT
for the
Southern District of Texas

United States of America)
v.)
Benjamin Douglas Guidry)
)
)
)

Case No. G-15-MJ-95

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of February 7, 2015 in the county of Galveston in the
Southern District of Texas, the defendant(s) violated:

<i>Code Section</i>	<i>Offense Description</i>
18 U.S.C. 2251	Production or attempted production of child pornography

This criminal complaint is based on these facts:

See attached affidavit

Continued on the attached sheet.



Complainant's signature

Kelly E. Berry, Special Agent

Printed name and title

Sworn to before me and signed in my presence.

Date: 12/17/2015



John R. Froeschner, Magistrate Judge

Printed name and title

City and state: Galveston, Texas

Anged AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Kelly E. Berry, being duly sworn, depose and state:

1. I am a Special Agent (SA) with the Federal Bureau of Investigation (FBI), assigned to the Special Agent in Charge (SAC), in Houston, Texas. I have been so employed since September 2006. As part of my daily duties as an FBI agent, I am assigned to the FBI Texas City Resident Agency which, among other things, investigates criminal violations relating to child exploitation and child pornography, including violations pertaining to the illegal production, distribution, receipt and possession of child pornography, in violation of 18 U.S.C. §§ 2251 and 2252. I have received training in the area of child pornography and child exploitation. I have had the opportunity to observe and review numerous examples of child pornography in all forms of media including computer media. Child Pornography, as defined in 18 U.S.C. § 2256, is:

“any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where – (A) the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct; . . . [or] (C) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.” For conduct occurring after April 30, 2003, the definition also includes “(B) such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from that of a minor engaging in sexually explicit conduct.”

2. This Affidavit is made in support of a criminal complaint charging Benjamin GUIDRY with violating 18 U.S.C. § 2251, which make it a crime to produce or attempt to produce child pornography.

3. I am familiar with the information contained in this Affidavit based upon the investigation I have personally conducted and my conversations with other law enforcement officers involved in this investigation, or who have engaged in numerous investigations involving child pornography.
4. Because this Affidavit is being submitted for the limited purpose of securing a criminal complaint, I have not included each and every fact known to me concerning this investigation, I have set forth only those facts that I believe are necessary to establish probable cause that evidence of a violation of 18 U.S.C. § 2251 has been committed by Benjamin Douglas GUIDRY on or about February 2015. Where statements of others are set forth in this Affidavit, they are set forth in substance and in part.
5. Through an investigation conducted by SA Berry, the Texas City Resident Agency executed a search warrant issued by United States Magistrate John R. Froeschner at the residence of Benjamin GUIDRY, 401 Senna Avenue, League City, Texas, on December 17, 2015. The search warrant was obtained based on information that led investigators to believe that GUIDRY had child pornography images stored on a hard drive that the Internal Revenue Service (IRS) seized at his office during a search warrant execution for an unrelated matter. One of the files on GUIDRY's hard drive was entitled "vcam_skype- 15you Bryson fucks his 9yo neighbor.avi." The video depicted a teenage boy setting up a camera, then vaginally penetrating a prepubescent female with his penis.
6. IRS Computer Investigative Specialists (CIS) conducted forensic analysis of an iPhone seized from GUIDRY's person during the IRS search warrant. During the course of further review of the iPhone, the IRS CIS read text message exchanges between Guidry and others. The IRS CIS noted several text conversations between Guidry and his 16 year-old step-daughter, B.M. In fact, between August 23, 2014 and May 12, 2015, Guidry and B.M. exchanged more than 2,300 text messages. B.M. is listed by her first name in Guidry's phone, and in some text message exchanges, Guidry

refers to B.M. by her first name. B.M. has a driver's license that lists her home address as 401 Senna Avenue, League City, Texas 77573. The content, which does not include the totality of the exchanges between Guidry and B.M., involves inappropriate communications, including the mention of "back rubs" and "cuddling." Below is a sampling of the text message exchanges:

01/22/2015

- Guidry: Is your mom asleep?
- B.M.: Yes she is
- Guidry: Can you check please quietly just in case?
- B.M.: Can u come rub my back
- Guidry: Yes one minute
- B.M.: It's been over a minute
- B.M.: Just for a little

02/04/2015: In the below conversation, Guidry had advised that he was securing tickets to a Taylor Swift concert for B.M.. Toward the end of the conversation, Guidry stated:

- Guidry: That's fine but I want something in return.
- Guidry: I want you to cuddle and rub my back.
- B.M.: OK

02/27/2015

- B.M.: I just want attention Ive had a hard day, I never get to talk to y'all much
- Guidry: I love you my sweet girl!!!!
- Guidry: You make me smile and happy I miss you so much it hurts at times
- Guidry: You want me to come in there?
- Guidry: I don't have to baby don't want to keep you up
- B.M.: I want a back rub
- Guidry: Cuddle?
- B.M.: Yes
- Guidry: Love on you?
- B.M.: No
- Guidry: So no back rub to love on you
- B.M.: Okay
- Guidry: So just cuddle no love
- B.M.: Yes
- Guidry: Okay we can just cuddle
- Guidry: But I want to cuddle topless
- Guidry: And will rub you
- Guidry: Your back

- B.M.: Um ok
- Guidry: Yes
- B.M.: Nvm I'm going to sleep it's late now
- B.M.: What
- Guidry: Or no deal rubbing either
- Guidry: Cuddle topless and rub you
- Guidry: Last chance
- Guidry: On my way

03/26/2015

- B.M.: I want to cuddle
- Guidry: Okay baby
- Guidry: Want me to love and rub on you
- B.M.: No
- Guidry: Okay
- Guidry: Why don't you come in here and we can cuddle
- B.M.: Okay
- Guidry: Want to lay in here or your mom's room
- B.M.: I don't want to wake her
- Guidry: You won't
- B.M.: Okay
- Guidry: Nevermind I will come cuddle in there for a few minutes
- B.M.: Okay

05/05/2015

- B.M.: Ben
- B.M.: Ben
- Guidry: Yes baby
- B.M.: I feel funnyu
- Guidry: You keep pushing me away
- B.M.: What
- Guidry: Why do you keep pushing me away
- B.M.: I'm not?
- Guidry: You are it upsets me
- B.M.: I don't mean to
- Guidry: All I want is to love on you
- Guidry: So if I come in there you won't push me away
- B.M.: No love, just cuddle, no touchy touchy
- Guidry: That is love
- Guidry: See you push me away
- B.M.: What is "love" then
- Guidry: Cuddle rub love

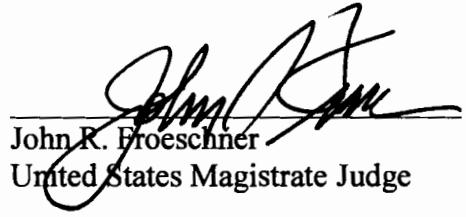
- Guidry: We both feel good
- B.M.: Cuddle rub that's it
- Guidry: Okay I'm
- Guidry: Be there soon

7. The IRS CIS noted during a review of the images and videos on the phone that several videos depicted sexual activity occurring between what appeared to be adults. However, one file, created February 7, 2015, appeared to be that of an underage (younger than 18 years of age) female asleep in bed. The face of the female was partially obscured, but the video shows a male's hand moving the sleeping female's t-shirt to expose her breasts. The video continues for approximately one minute while the female remains asleep. The face of the male is not visible during the video, but the male's fingers and certain details of the furniture and bed are visible.
8. During the execution of the federal search warrant, investigators found items in the residence that were identical to those in the video on GUIDRY's phone. The items, including an ornate metal headboard, a blue wall, a patterned lamp shade, and a heating pad were found in the bedroom of GUIDRY's 16 year-old step-daughter, B.M. Additionally, a comforter that was identical to the comforter in the video was found on the floor in the room next to B.M.'s room. A maroon t-shirt that was identical to the t-shirt on the underage female in the video was found in Shannon MOORE's closet, where her daughter, B.M. keeps her clothes. MOORE stated that B.M. often wears one of her maroon high school t-shirts to bed.
9. Investigators photographed GUIDRY's fingernails, which appeared damaged from being chewed. At least one of the fingernails on the male hand in the video appeared to have been damaged or chewed.

10. Based upon the information delineated above, I believe that probable cause exists for the issuance of a Criminal Complaint charging Benjamin Douglas GUIDRY with a violation of 18 U.S.C. §§ 2251—production or attempted production of child pornography.


Kelly E. Berry
Special Agent, FBI

Subscribed and sworn before me this 17th of December 2015, and I find probable cause.


John R. Froeschner
United States Magistrate Judge